HOME BUILDERS & REMODELERS ASSOCIATION OF CONNECTICUT, INC.
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Your Home Is Our Business

March 14, 2013

To: Senator Catherine A. Osten, Co-Chairman
Representative Peter A. Tercyak, Co-Chairman
Members of the Labor & Public Employees Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: **SB 1075, AAC Construction Services and the Reporting of Nonwage Payments**

The HBRA of Connecticut is a professional trade association with about nine hundred (900) member firms statewide employing tens of thousands of CT's citizens. Our members, all small businesses, are residential and small commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to our diverse industry and to consumers. While our membership has declined over the course of our seven-year Great Housing Recession from its high of 1,500 members, we build between 70% to 80% of all new homes and apartments in the state each year and engage in countless home remodeling projects.

We oppose SB 1075 as it is both duplicative with the current federal 1099 reporting requirements but also a nonsensical expansion of current filings. Moreover, it appears the underlying issue with this bill is the worker misclassification problem. We have previously highlighted the particular concerns our industry has with worker misclassification and the tremendous difficulty the residential construction industry has in accurately answering many questions with the Dept. of Labor's ABC Test (see our testimony on SB 344 and SB 926). **We urge you and DOL to fix the significant problems with the one-size fits-all ABC Test before imposing new requirements on businesses.**

Under current law, general contractors must report nonwage payments made to most independent contractors for services rendered on federal Form 1099-Misc (Box 7). The only relevant exception from the 1099 filing requirement is when the service provider is a corporation (although, there are some non-relevant exceptions to this corporation exception). Copies of these 1099 forms are already provided to DRS on Form CT-1096. **Thus, for any nonwage payments made for services rendered by independent sole proprietors, LLCs, and partnerships, SB 1075 duplicates current federal law.**

However, SB 1075 has no such exception for corporations and, thus, inexplicably goes beyond the federal 1099 reporting. The federal exemption for not filing a 1099 for nonwage payments made to corporations exists because the purpose of 1099s is to avoid underreporting of income. And, corporations have very strict income reporting requirements to the IRS (i.e., including filing a corporate return with a balance sheet) that makes it very difficult – near impossible – to hide money. **SB 1075's requirement to**

report nonwage payments to corporations also has no relevance to the underlying worker misclassification issue and creates additional, unnecessary paperwork burdens for businesses operating in construction services.

Moreover, why are construction services singled out? Misclassification issues are not unique to the construction industry. And, we have been told by DOL that while the construction industry has significant misclassification issues it is not the worst offender.

Also, certain language in SB 1075 raises confusion and will result in unintended noncompliance and unnecessary liability. The federal requirement to file a 1099 for services by a non-employee includes "payments for parts or materials used to perform the services if supplying the parts or materials was incidental to providing the service." See 2012 Instructions for Form 1099-Misc, Box 7. Nonemployee Compensation. However, SB 1075 in line 21states that this new state form would include "payment made for materials and equipment ...." Does this "materials and equipment" language mean something different than the IRS' "parts or materials ... incidental to providing the service" language? **We urge you to not proceed with this bill, but if you do, we urge you to at least duplicate the language used by the IRS to avoid confusion and possibly litigation.**

In addition, the definitions in the bill and how the terms are applied could result in reporting payments made solely for materials purchased where no services are provided to a particular payor, yet the material supplier also provides construction services to other construction firms. Reporting payments solely for materials purchased makes no sense, would be a huge and unnecessary paperwork burden and serves no useful purpose to address worker misclassification issues.

Since current federal law already requires contractors – indeed all businesses – to file 1099s as described above, and copies must be filed with DRS, why not simply require DRS to transmit copies of filed 1099s to the Unemployment Compensation Administrator (lines 33-39)? This could easily be done electronically. Imposing an additional burden on businesses of filing another report with DRS is unnecessary. Better still, rather than require a whole bunch of unnecessary reporting by businesses, or a transfer of files from DRS to DOL, why would you impose this paperwork burden prior to tackling the underlying issue?

We repeat that the root of the problem for the construction industry is the inability to comply with a clear set of rules for identifying independent contractors. We strongly object to the notion that all misclassifications are intentional or willful. The ABC Test is unworkable as a one-size fits-all test. Please fix the significant issues with the ABC Test for the residential construction industry before raising noncompliance penalties or imposing new paperwork burdens on our small businesses. See our mark-up of the ABC Test we submitted to you on February 19 with our testimony on SB 344, AA Clarifying the Definition of Independent Contractor, that outlines in detail all the problems we have with the ABC Test.

Please do not adopt SB 1075, and thank you for the opportunity to express our views on this important topic.